In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.3276 of 2006.

Date of decision:28.10.2006.

Shoe Ram.

...Petitioner.

Versus

Raja Ram and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Ajay Jain Advocate for the petitioner.

Mr.Gorakh Nath Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Smt. Phoola Devi, respondent No.3 was the owner of land measuring 39 Kanals 5 Marlas. She executed an agreement of sale dated 22.2.1999 in respect of this land in favour of Raja Ram, respondent No.1 and Indraj, respondent No.2. Out of sale consideration of Rs. ten lacs, Rs.7.5 lacs were paid as earnest money to Phoola Devi, respondent No.3. The sale deed was to be executed by Phoola Devi respondent in favour of Raja Ram and Indraj, respondent Nos.1 and 2 on 15.6.1999. The sale deed was not executed on which on 15.10.1999

Raja Ram and Indraj filed a suit for specific performance of agreement of sale dated 22.2.1999.

During the pendency of that suit, Phoola Devi executed the release deed dated 29.9.2000 in favour of her brother Shoe Ram, petitioner. Respondent Nos.1 and 2 accordingly amended the plaint and pleaded that the release deed dated 29.9.2000 was illegal, null and void and did not affect their rights. Thereafter, Shoe Ram petitioner filed an application under Order 1 Rule10 CPC for being impleaded as a party. The said application has been dismissed by the learned trial Court vide impugned order dated 28.2.2006.

The learned trial Court observed that the question regarding release deed was not involved in the suit for specific performance filed by respondent Nos.1 and 2. It was, of course, not involved as the suit was originally filed by respondent Nos.1 and 2. However, after respondent Nos.1 and 2 amended the plaint and challenged the legality and validity of release deed dated 29.9.2000, this issue did arise in this controversy.

Secondly, the learned trial Court held that the application under Order 1 Rule 10 CPC was filed by the petitioner after a long delay i.e.on 9.8.2005. Necessity arose to the petitioner to file this application only after respondent Nos.1 and 2 amended the plaint and challenged the legality and validity of the release deed dated 29.9.2000 which was made in the year 2004. Therefore, the application filed by the petitioner was not filed after long delay. Otherwise also, when

respondent Nos.1 and 2 have amended the plaint and included paragraph challenging legality and validity of release deed dated 29.9.2000, the petitioner becomes a necessary party to defend the same. Reference may be made to the judgment of this Court reported as **Ram Sarup Versu Raminder Singh,** 2003(4) Recent Civil Reports 246 in which it was held that a transferee during the pendency of suit for specific performance is a necessary party.

Accordingly, this petition is accepted. The impugned order dated 28.2.2006 is set aside. The petitioner is held to be a necessary party and the application filed under Order 1 Rule 10 CPC is accepted.

October 28,2006. (S.N. Aggarwal)
Jaggi Judge